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RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 27th September, 1958:—

BILL No. VIII OF 1958

A Bill further to amend the Chartered Accountants Act, 1949.

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Chartered Accountants (Amendment) Act, 1958. Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

38 of 1949. 2. In the preamble to the Chartered Accountants Act, 1949 (hereinafter referred to as the principal Act), for the words “profession of accountants”, the following shall be substituted, namely:— Amendment
of preamble.

“profession of accountants other than cost and works accountants”.

3. For sub-section (3) of section 5 of the principal Act, the following sub-section shall be substituted, namely:— Amendment
of section 5.

“(3) A member, being an associate who has been in continuous practice in India for at least five years, whether before or after the commencement of this Act or whether partly before and partly after the commencement of this Act, and a member who has been an associate for a continuous period of not less than five years and who possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a chartered accountant shall, on payment of the prescribed entrance fee, which

shall not exceed rupees two hundred in any case, and on application made and granted in the prescribed manner, be entered in the Register as a fellow of the Institute and shall be entitled to use the letters F.C.A. after his name to indicate that he is a fellow of the Institute of Chartered Accountants.”.

**Amendment
of section 6.**

4. In section 6 of the principal Act,—

(i) in sub-section (1), after the words “entitled to practise”, the words “whether in India or elsewhere” shall be inserted;

(ii) in sub-section (2), for the words and letters “and such fee shall be due on the 1st day of April in each year.”, the following shall be substituted, namely:—

“and such fee shall be payable on or before the 1st day of April in each year.”.

**Amendment
of section 7.**

5. In section 7 of the principal Act,—

(i) for the words “no person”, the words “no member” shall be substituted.

(ii) in the proviso, for the words “such person”, the words “such member” shall be substituted.

**Amendment
of section 8.**

6. In section 8 of the principal Act,—

(i) for clause (ii), the following clause shall be substituted, namely:—

“(ii) is of unsound mind and stands so adjudged by a competent court; or”;

(ii) for clause (vi), the following clause shall be substituted, namely:—

“(vi) has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct:

Provided that a person who has been removed from membership for a specified period, shall not be entitled to have his name entered in the Register until the expiry of such period.”.

**Amendment
of section 9.**

7. In sub-section (2) of section 9 of the principal Act,—

(i) in clause (a), for the words “persons elected by members of the Institute”, the following shall be substituted, namely:—

“not more than twenty-four persons elected by members of the Institute”;

(u) in clause (b), for the words "five persons", the words "six persons" shall be substituted.

8. For section 10 of the principal Act, the following section shall be substituted, namely:—

Substitution
of a new
section for
section 10.

"10. (1) Elections under clause (a) of sub-section (2) of section 9 shall be conducted in the prescribed manner.

Mode of
election to
the Council.

(2) Where any dispute arises regarding any such election, the matter shall be referred by the Council to a Tribunal appointed by the Central Government in this behalf and the decision of such Tribunal shall be final:

Provided that no such reference shall be made except on an application made to the Council by an aggrieved party within thirty days from the date of the declaration of the result of the election.

(3) The expenses of the Tribunal shall be borne by the Council."

9. To sub-section (3) of section 13 of the principal Act, the following proviso shall be added, namely:—

Amendment
of section 13.

"Provided that no election shall be held to fill a casual vacancy occurring within six months prior to the date of the dissolution of the Council, but such a vacancy may be filled by nomination by the Central Government after consultation with the President of the Council."

10. Section 14 of the principal Act shall be re-numbered as sub-section (1) thereof, and, after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

Amendment
of section
14.

"(2) Notwithstanding the expiration of the duration of a Council (hereinafter referred to as the former Council), the former Council shall continue to exercise its functions until a new Council is constituted in accordance with the provisions of this Act, and on such constitution, the former Council shall stand dissolved."

11. In sub-section (2) of section 15 of the principal Act,—

Amendment
of section
15.

(i) in clause (b), for the words "articled clerks", the words "articled and audit clerks" shall be substituted;

(ii) in clause (g), the words "chartered accountants, associates" shall be omitted;

(iii) in clause (i), for the words "chartered accountants", the words "members of the Institute" shall be substituted.

Amendment
of section
16.

12. In section 16 of the principal Act,—

(i) in clause (e) of sub-section (1), after the words “members of the Council”, the words “and members of its committees” shall be inserted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The Secretary of the Council shall be entitled to participate in the meetings of the Council but shall not be entitled to vote thereat.”.

Amendment
of section
17.

13. In section 17 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The Council may also form such other committees from amongst its members as it deems necessary for the purpose of carrying out the provisions of this Act, and any committee so formed may, with the sanction of the Council, co-opt such other members of the Institute not exceeding two-thirds of the members of the committee as the committee thinks fit, and any member so co-opted shall be entitled to exercise all the rights of a member of the committee.”.

Amendment
of section
19.

14. In sub-section (3) of section 19 of the principal Act, for the words “the Gazette of India”, the words “such manner as may be prescribed” shall be substituted.

Substitution
of new sec-
tion for sec-
tion 20.

15. For section 20 of the principal Act, the following section shall be substituted, namely:—

Removal
from the
Register.

“20. (1) The Council may remove from the Register the name of any member of the Institute—

(a) who is dead; or

(b) from whom a request has been received to that effect; or

(c) who has not paid any prescribed fee required to be paid by him; or

(d) who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in section 8, or who for any other reason

has ceased to be entitled to have his name borne on the Register.

(2) The Council shall remove from the Register the name of any member in respect of whom an order has been passed under this Act removing him from membership of the Institute."

16. For Chapter V of the principal Act, the following Chapter shall be substituted, namely:—

Substitution
of new
Chapter for
Chapter V.

"CHAPTER V

MISCONDUCT

21. (1) Where on receipt of information by, or of a complaint made to it, the Council is *prima facie* of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed, and shall report the result of its inquiry to the Council.

Procedure
in inquiries
relating to
misconduct
of members
of Institute.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly and shall proceed in the manner laid down in the succeeding sub-sections.

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit;

Provided that where it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon.

(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is misconduct other than any such misconduct as is referred to in sub-section (4), it shall forward the case to the High Court with its recommendations thereon.

(6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard, and may thereafter make any of the following orders, namely:—

(a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;

(b) reprimand the member;

(c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;

(d) refer the case to the Council for further inquiry and report.

(7) Where it appears to the High Court that the transfer of any case pending before it to another High Court, will promote the ends of justice or tend to the general convenience of the parties, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall deal with it as if the case had been forwarded to it by the Council.

Explanation I.—In this section, 'High Court' means the highest civil court of appeal, not including the Supreme Court, exercising jurisdiction in the area in which the person whose conduct is being inquired into carries on business, or has his principal place of business at the commencement of the inquiry:

Provided that where the cases relating to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall, having regard to the ends of justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members.

Explanation II.—For the purposes of this section “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

5 of 1908.

(8) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit.

22. For the purposes of this Act, the expression “professional misconduct” shall be deemed to include any act or omission specified in the First Schedule and/or the Second Schedule, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

Professional
misconduct
defined.

22A. (1) Any member of the Institute aggrieved by any Appeals. order of the Council imposing on him any of the penalties referred to in sub-section (4) of section 21, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the High Court.

(2) The High Court may, on its own motion or otherwise, after calling for the records of any case, revise any order made by the Council under sub-section (2) or sub-section (4) of section 21 and may—

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, confirm, or enhance the penalty imposed by the order;

(c) remit the case to the Council for such further inquiry as the High Court considers proper in the circumstances of the case; or

(d) pass such other order as the High Court thinks fit:

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has also been given an opportunity of being heard.

Explanation.—In this section “High Court” has the same meaning as in section 21.”.

Amendment
of section
23.

17. In sub-section (1) of section 23 of the principal Act, for the words “The Council may constitute such Regional Councils”, the following shall be substituted, namely:—

“For the purpose of advising it on matters concerning its functions, the Council may constitute such Regional Councils”.

Insertion of
new section
24A.

18. After section 24 of the principal Act, the following section shall be inserted, namely:—

Penalty for
using name
of the Coun-
cil, award-
ing degrees
of chartered
accountancy,
etc.

“24A. (1) Save as otherwise provided in this Act, no person shall—

(i) use a name or a common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;

(ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence similar to that of a member of the Institute; or

(iii) seek to regulate in any manner whatsoever the profession of accountants other than cost and works accountants.

(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(3) Nothing contained in this section shall apply to any University established by law or to any body affiliated to the Institute.”.

19. In sub-section (2) of section 30 of the principal Act, for clause (j), the following clause shall be substituted, namely:—

Amendment
of section
30.

“(j) the training of articled and audit clerks, the fixation of limits within which premia may be charged from articled clerks and the cancellation of articles and termination of audit service for misconduct or for any other sufficient cause;”.

20. After section 30 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
30A.

“30A. (1) Where the Central Government considers it expedient so to do, it may, by order in writing, direct the Council to make any regulations or to amend or revoke any regulations already made within such period as it may specify in this behalf.

Powers of
Central
Government
to direct
regulations
to be made
or to make
or amend
regulations

(2) If the Council fails or neglects to comply with such order within the specified period, the Central Government may make the regulations or amend or revoke the regulations made by the Council, as the case may be, either in the form specified in the order or with such modifications thereof as the Central Government thinks fit.”.

21. For the Schedule to the principal Act, the following Schedules shall be substituted, namely:—

Substitution
of new
Schedules
for the exist-
ing
Schedule.

“THE FIRST SCHEDULE

[See section 21(4) and 22]

PART I

Professional misconduct in relation to chartered accountants.

A chartered accountant shall be deemed to be guilty of professional misconduct, if he—

(1) allows any person to practise in his name as a chartered accountant unless such person is also a chartered accountant and is in partnership with or employed by himself;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative or the widow or dependents of a deceased partner whether such partner had retired from practice or not at the date of his decease;

(3) accepts or agrees to accept any part of the profits of the professional work of a lawyer, auctioneer, broker or other agent who is not a member of the Institute;

(4) enters into partnership with any person other than a chartered accountant or a person resident without India who but for his residence abroad would be entitled to be registered as a member under clause (v) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships, provided that the chartered accountant shares in the fees or profits of the business of the partnership both within and without India;

(5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a chartered accountant, any professional business;

(6) solicits clients or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;

(7) advertises his professional attainments or services, or uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Chartered Accountants or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

(8) accepts a position as auditor previously held by another chartered accountant without first communicating with him in writing;

(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 226 of the Companies Act, 1956 in respect of such appointment have been duly complied with;

(10) charges or offers to charge, accepts or offers to accept in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any regulations made under this Act;

(11) engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage:

Provided that nothing contained herein shall dis-entitle a chartered accountant from being a director of a company, unless he or any of his partners is interested in such company as an auditor;

(12) accepts a position as auditor previously held by some other chartered accountant or a restricted State auditor in such conditions as to constitute under-cutting;

(13) allows a person not being a member of the Institute or a member not being his partner to sign on his behalf or on behalf of his firm, any balance-sheet, profit and loss account, report or financial statements.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct), if he—

(1) being an employee of any company, firm, or person;

(a) pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by the member;

(b) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification;

(c) discloses confidential information acquired in the course of his employment except as and when required by law or except as permitted by the employer;

(2) not having a certificate of practice, represents that he is in practice or practises as a chartered accountant.

PART III*Professional misconduct in relation to members of the Institute generally*

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;

(2) not being a fellow styles himself as a fellow;

(3) does not supply the information called for, or does not comply with the requirements asked for, by the Council or any of its Committees;

(4) is guilty of such other act or omission as may be specified by the Council by notification in the Gazette of India.

THE SECOND SCHEDULE

[See sections 21 (5) and 22]

PART I

Professional misconduct in relation to chartered accountants requiring action by a High Court

A chartered accountant shall be deemed to be guilty of professional misconduct, if he—

(1) discloses information acquired in the course of his professional engagement to any person other than his client, without the consent of his client or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name or in the name of his firm a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant;

(3) permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) expresses his opinion on financial statements of any business or any enterprise in which he, his firm or a partner in his

firm has a substantial interest, unless he discloses the interest also in his report;

(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary to make the financial statement not misleading;

(6) fails to report a material mis-statement known to him to appear in a financial statement with which he is concerned in a professional capacity;

(7) is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances;

(10) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended;

(11) is guilty of such other act or omission in his professional capacity as may be specified by the Council by notification in the Gazette of India.

PART II

Professional misconduct in relation to members of the Institute generally requiring action by a High Court

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act and the regulations made thereunder."

STATEMENT OF OBJECTS AND REASONS

The Chartered Accountants Act came into force in 1949. Experience gained from the working of the Act during the last nine years has disclosed certain defects and deficiencies. Certain practical difficulties in the working of the Act have also been brought to the notice of the Government by the Institute of Chartered Accountants of India. The object of this Bill is to remove these defects and deficiencies and to make such other amendments in the Act as will facilitate its working and ensure the better fulfilment of the purposes underlying it.

NEW DELHI;

LAL BAHADUR.

The 23rd September, 1958.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Practical training under a chartered accountant can be had either as an articled clerk or as an audit clerk. Clause (j) of sub-section (2) of section 30 of the Chartered Accountants Act, 1949, enables the Council to frame regulations for the training of articled clerks and for the cancellation of articles. Clause 19 of the Bill amends section 30 of the said Act so as to enable the Council to frame regulations respecting the training of audit clerks also and the termination of their services.

2. The delegation of legislative power in clause 19 is of a normal character.

S. N. MUKERJEE,
Secretary.

